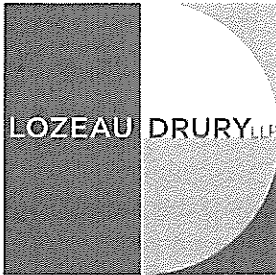


MAR 25 2019



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

March 18, 2018

Kellina Anderson, Plant Manager and
Legally Responsible Person
Laura Cremer, Environmental Specialist, QISP
Salvador Valle, Plant Superintendent
Praxair, Inc.
2300 E. Pacific Coast Highway
Wilmington, CA 90744

Praxair, Inc.
2300 E. Pacific Coast Highway
Wilmington, CA 90744

VIA FIRST CLASS MAIL

CSC Lawyers Incorporating Service
(Registered Agent for Service of Process for
Praxair, Inc.)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Ms. Anderson, Ms. Cremer, and Mr. Valle:

I am writing on behalf of Communities for a Better Environment ("CBE") in regard to violations of the Clean Water Act (the "Act") that CBE believes are occurring at the Praxair, Inc. industrial facility located at 2300 E Pacific Coast Highway in Wilmington, California (the "Facility"). This letter is being sent to Praxair, Inc., Kellina Anderson, Laura Cremer, and Salvador Valle as the responsible owners or operators of the Facility (all recipients are hereinafter referred to as "Praxair").

This letter addresses Praxair's unlawful discharge of pollutants from the Facility into Dominguez Channel. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CBE refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." This

letter notifies Praxair of ongoing violations of the substantive and procedural requirements of the General Permit at the Facility.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CBE hereby places Praxair on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CBE intends to file suit in federal court against Praxair under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. The Facility.

On January 9, 1992, Praxair filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). On June 21, 2017, Praxair filed an updated NOI under the 2015 General Permit. The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") and the State Board is 4 19I001017. In its 1992 NOI, Praxair certifies that the Facility is classified under SIC code 2813 ("industrial gases"). In its 2017 NOI, in addition to SIC code 2813, Praxair certifies that the Facility is also classified under SIC code 4231 ("terminal and joint terminal maintenance facilities for motor freight transportation"). The Facility collects and discharges storm water from its 9.1-acre industrial site into at least one storm water discharge location at the Facility. Based on information and belief, the storm water discharged by Praxair is discharged directly to Dominguez Channel, which connects to Los Angeles Harbor in the East Basin of the Port of Los Angeles in San Pedro Bay on the Pacific Ocean.

B. Water Quality Standards, Guidelines, and Numeric Action Levels.

The Regional Board has identified beneficial uses of the Dominguez Channel Watershed and established water quality standards for it in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties", generally referred to as the "Basin Plan." See http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

The beneficial uses of these waters include, among others, commercial and sport fishing, estuarine habitat, marine habitat, wildlife habitat, rare, threatened, or endangered species, migration of aquatic organisms, and spawning, reproduction, and/or early development, water

contact recreation, and noncontact water recreation. The noncontact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at 2-2. Contact recreation includes swimming, wading, water-skiing, skin and scuba diving, surfing, whitewater activities, fishing, and uses of natural hot springs. *Id.*

The Basin Plan includes a narrative biostimulatory substance standard which states that “[w]aters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth causes nuisance or adversely affects beneficial uses.” *Id.* at 3-8. The Basin Plan contains a narrative floatables standard which states that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-9. The Basin Plan contains a narrative color standard which states that “[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-9. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-11. The Basin Plan provides that “[t]he pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-15. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-16. The Basin Plan includes a narrative solid, suspended and settleable materials standard which states that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-16. The Basin Plan contains a Nitrogen (Nitrate, Nitrite) standard which states that “[w]aters shall not exceed 10 mg/L nitrogen as nitrate-nitrogen plus nitrite-nitrogen (NO₃-N+NO₂-N), 45 mg/L as nitrate (NO₃), 10 mg/L as nitrate-nitrogen (NO₃-N), or 1 mg/L as nitrite-nitrogen (NO₂-N) or as otherwise designated in Table 3-8.” *Id.* at 3-11. The Basin Plan contains a taste and odor standard that states, “[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-16. The Basin Plan contains a turbidity standard that states “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-17.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).¹ The following benchmarks have been established for pollutants discharged by Praxair: pH – 6.0 - 9.0 standard units (“s.u.”); aluminum – 0.75 mg/L; iron – 1.0 mg/L; and nitrate + nitrite as

¹ The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

nitrogen ("N+N") – 0.68 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit for pollutants discharged by Praxair: aluminum – 0.75 mg/L; iron – 1.0 mg/L; and N+N – 0.68 mg/L. The 2015 Permit also establishes an instantaneous maximum pH NAL of 6.0 - 9.0 s.u.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit.

Praxair has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Praxair has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, aluminum, iron, and N+N in violation of the General Permit. Praxair's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of the applicable numerical and narrative water quality standards. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling / Observation Date	Parameter	Observed Concentration / Conditions	Basin Plan Water Quality Objective / CTR
11/29/2018	Narrative	"Slightly brown"	Basin Plan at 3-9
2/27/2018	Narrative	Floating material documented as "light sediment"	Basin Plan at 3-9
2/27/2018	Narrative	Suspended material documented as "light sediment"	Basin Plan at 3-16
1/9/2018	Narrative	Turbidity	Basin Plan at 3-17
2/27/2018	pH	6.0	Basin Plan at 3-15
12/13/2015	pH	5.81	Basin Plan at 3-15
3/2/2015	pH	5.57	Basin Plan at 3-15
4/1/2014	pH	5.68	Basin Plan at 3-15

The information in the above table reflects data gathered from Praxair's self-monitoring evaluated in its 2017-2018 Visual Observations. CBE alleges that since at least March 18, 2014, and continuing through the date of this notice, Praxair has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH - The pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges. (Basin Plan at 3-15.)
- Suspended Solids - Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses. (Basin Plan at 3-16.)
- Floating Material - Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. (Basin Plan at 3-9.)

- Discoloration - Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. (Basin Plan at 3-9.)

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of applicable NALs and EPA benchmarks. The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling / Observation Date	Parameter	Observed Concentration / Conditions	EPA Benchmark Value / Annual NAL	Outfall (as identified by the Facility)
12/13/2015	pH	5.81	Less than 6 Greater than 9	D1 Facility Gate Sheet Flow
3/2/2015	pH	5.57	Less than 6 Greater than 9	Front Gate
4/1/2014	pH	5.68	Less than 6 Greater than 9	Front Gate
1/15/2019	Iron	2.71 mg/L	1 mg/L	Stormwater Lift Station
11/29/2018	Iron	1.16 mg/L	1 mg/L	In Front of Truck Garage
10/13/2018	Iron	1.66 mg/L	1 mg/L	In Front of Truck Garage
2018-2019 Reporting Year ²	Iron	1.23 mg/L	1 mg/L	All Sampling Locations
2/27/2018	Iron	2.65 mg/L	1 mg/L	In Front of Truck Garage
1/9/2018	Iron	1.39 mg/L	1 mg/L	In Front of Truck Garage
2017-2018 Reporting Year ³	Iron	1.55 mg/L	1 mg/L	In Front of Truck Garage
1/5/2017	Iron	2.62 mg/L	1 mg/L	Stormwater Lift Station
12/30/2016	Iron	2.57 mg/L	1 mg/L	Stormwater Lift Station
2016-2017 Reporting Year ⁴	Iron	1.69 mg/L	1 mg/L	All Sampling Locations
1/5/2016	Iron	3.66 mg/L	1 mg/L	D2 Stormwater Lift Station
1/5/2016	Iron	2.4 mg/L	1 mg/L	D1 Facility Gate Sheet Flow

² This value represents the average of all Iron measurements taken at the Facility during the 2018-2019 reporting year and is higher than 1 mg/L, the annual NAL for Iron.

³ This value represents the average of all Iron measurements taken at the Facility during the 2017-2018 reporting year and is higher than 1 mg/L, the annual NAL for Iron.

⁴ This value represents the average of all Iron measurements taken at the Facility during the 2016-2017 reporting year and is higher than 1 mg/L, the annual NAL for Iron.

12/13/2015	Iron	2.1 mg/L	1 mg/L	D1 Facility Gate Sheet Flow
2015-2016 Reporting Year ⁵	Iron	1.89 mg/L	1 mg/L	All Sampling Locations
3/2/2015	Iron	1.24 mg/L	1 mg/L	Front Gate
12/12/2014	Iron	1.15 mg/L	1 mg/L	Front Gate
11/20/2014	Iron	3.54 mg/L	1 mg/L	Front Gate
2014-2015 Reporting Year	Iron	1.98 mg/L	1 mg/L	Front Gate
2/2/2014	Iron	3.4 mg/L	1 mg/L	Front Gate
1/15/2019	Aluminum	2.38 mg/L	0.75 mg/L	Stormwater Lift Station
11/29/2018	Aluminum	1.13 mg/L	0.75 mg/L	In Front of Truck Garage
10/13/2018	Aluminum	1.14 mg/L	0.75 mg/L	In Front of Truck Garage
2018-2019 Reporting Year ⁶	Aluminum	1.00 mg/L	0.75 mg/L	All Sampling Locations
2/27/2018	Aluminum	1.52 mg/L	0.75 mg/L	In Front of Truck Garage
1/9/2018	Aluminum	0.851 mg/L	0.75 mg/L	In Front of Truck Garage
2017-2018 Reporting Year ⁷	Aluminum	0.95 mg/L	0.75 mg/L	In Front of Truck Garage
1/5/2017	Aluminum	1.89 mg/L	0.75 mg/L	Stormwater Lift Station
12/30/2016	Aluminum	1.38 mg/L	0.75 mg/L	Stormwater Lift Station
2016-2017 Reporting Year ⁸	Aluminum	1.12 mg/L	0.75 mg/L	All Sampling Locations
1/5/2016	Aluminum	2.52 mg/L	0.75 mg/L	D2 Stormwater Lift Station
1/5/2016	Aluminum	1.8 mg/L	0.75 mg/L	D1 Facility Gate Sheet Flow
12/13/2015	Aluminum	1.54 mg/L	0.75 mg/L	D1 Facility Gate Sheet Flow
2015-2016 Reporting Year ⁹	Aluminum	1.34 mg/L	0.75 mg/L	All Sampling Locations
3/2/2015	Aluminum	2.4 mg/L	0.75 mg/L	Front Gate
12/12/2014	Aluminum	0.825 mg/L	0.75 mg/L	Front Gate
11/30/2014	Aluminum	2.31 mg/L	0.75 mg/L	Front Gate
2/2/2014	Aluminum	2.35 mg/L	0.75 mg/L	Front Gate

⁵ This value represents the average of all Iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1 mg/L, the annual NAL for Iron.

⁶ This value represents the average of all Aluminum measurements taken at the Facility during the 2018-2019 reporting year and is higher than 0.75 mg/L, the annual NAL for Aluminum.

⁷ This value represents the average of all Aluminum measurements taken at the Facility during the 2017-2018 reporting year and is higher than 0.75 mg/L, the annual NAL for Aluminum.

⁸ This value represents the average of all Aluminum measurements taken at the Facility during the 2016-2017 reporting year and is higher than 0.75 mg/L, the annual NAL for Aluminum.

⁹ This value represents the average of all Aluminum measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.75 mg/L, the annual NAL for Aluminum.

2/27/2018	N+N	5.8 mg/L	0.68 mg/L	In Front of Truck Garage
2017-2018 Reporting Year ¹⁰	N+N	2.12 mg/L	0.68 mg/L	In Front of Truck Garage
1/5/2017	N+N	0.88 mg/L	0.68 mg/L	Stormwater Lift Station
12/30/2016	N+N	1.4 mg/L	0.68 mg/L	Stormwater Lift Station
12/30/2016	N+N	1.6 mg/L	0.68 mg/L	Front Gate
2016-2017 Reporting Year ¹¹	N+N	1.0 mg/L	0.68 mg/L	All Sampling Locations
1/5/2016	N+N	1.6 mg/L	0.68 mg/L	D2 Stormwater Lift Station
12/13/2015	N+N	2.5 mg/L	0.68 mg/L	D1 Facility Gate Sheet Flow
2015-2016 Reporting Year ¹²	N+N	1.00 mg/L	0.68 mg/L	All Sampling Locations
11/30/2014	N+N	2 mg/L	0.68 mg/L	Front Gate
2/2/2014	N+N	3.7 mg/L	0.68 mg/L	Front Gate

The information in the above table reflects data gathered from Praxair's self-monitoring during the 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 wet seasons/reporting years. CBE notes that Praxair's sampling results from the 2015-2016 reporting year placed the Facility in Level 1 Status pursuant to the General Permit for aluminum, iron, and N+N. Because the Facility's discharges of aluminum, iron, and N+N have not been meaningfully reduced as a result of the Facility's Level 1 Status Report, as of July 1, 2017, the Facility is now in Level 2 Status. CBE alleges that since at least March 18, 2014, Praxair has discharged storm water contaminated with pollutants at levels that exceed the applicable NALs and EPA Benchmarks for pH, aluminum, iron, and N+N.

CBE's investigation, including its review of Praxair's SWPPP, Praxair's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA benchmark values and NALs, indicates that Praxair has not implemented BAT and BCT at the Facility for its discharges of pH, aluminum, iron, N+N, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Praxair was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Praxair is

¹⁰ This value represents the average of all N+N measurements taken at the Facility during the 2017-2018 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

¹¹ This value represents the average of all N+N measurements taken at the Facility during the 2016-2017 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

¹² This value represents the average of all N+N measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CBE alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since March 18, 2014, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CBE alleges that Praxair has discharged storm water containing impermissible and unauthorized levels of pH, aluminum, iron, and N+N in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.¹³

Further, CBE puts Praxair on notice that 2015 Permit Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) are each separate, independent requirements with which Praxair must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the 2015 Permit's Effluent Limitations, including Praxair's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State and are evidence of the Facility's failure to implement BAT and BCT, the NALs are not effluent limitations that by themselves determine whether an industrial facility has implemented BMPs that achieve BAT/BCT.¹⁴ Finally, even though Praxair submitted an Exceedance Response Action Level 1 Report in December 2016 and an ERA Level 2 Report in December 2017, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

The above-described unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, aluminum, iron, and N+N, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without

¹³ The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Long Beach, California located approximately 5.8 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at <https://www.ncdc.noaa.gov/cdo-web/>. (Last accessed on March 15, 2019).

¹⁴ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Praxair is subject to penalties for violations of the General Permit and the Act since March 18, 2014.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Required Sampling and Analysis.

The 1997 Permit requires dischargers to collect storm water samples from all storm water discharge locations during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). Each sample must be analyzed for TSS, Oil & Grease, pH, additional parameters identified as likely to be present at a facility, and additional parameters applicable based on a facility's SIC code, among others. The Facility has repeatedly violated these monitoring requirements.

a. Failure to Sample All Qualifying Events.

On information and belief, CBE alleges that during the 2016-2017 reporting year, Praxair failed to collect and analyze a second storm water sample during the first half of the reporting year, and failed to collect and analyze a second storm water sample during the second half of the reporting year from any discharge locations.

CBE alleges that local precipitation data shows that discharges occurred on several dates during the first and second halves of the 2016-2017 reporting year on which the Facility was open, but the Facility did not collect and analyze a second storm water sample. Specifically, CBE alleges that discharges occurred on the following dates, but a storm water sample was not taken at the Facility:

- | | | |
|---------------------|---------------------|---------------------|
| • October 17, 2016 | • December 23, 2016 | • February 3, 2017 |
| • November 20, 2016 | • December 30, 2016 | • February 6, 2017 |
| • November 21, 2016 | • January 9, 2017 | • February 7, 2017 |
| • November 26, 2016 | • January 10, 2017 | • February 10, 2017 |
| • November 27, 2016 | • January 11, 2017 | • February 17, 2017 |
| • December 15, 2016 | • January 12, 2017 | • April 8, 2017 |
| • December 16, 2016 | • January 19, 2017 | • May 7, 2017 |
| • December 21, 2016 | • January 20, 2017 | |
| • December 22, 2016 | • January 22, 2017 | |

Because Praxair failed to collect and analyze samples from a second storm water discharges during the first and second halves of the 2016-2017 reporting year, Praxair has violated the General Permit's monitoring requirements.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation.

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CBE indicates that Praxair has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide a sufficient explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce

pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Praxair has not proposed sufficient BMPs that properly respond to EPA benchmark and water quality standard exceedances in violation of the General Permit.

CBE puts Praxair on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Praxair is in ongoing violation of the General Permit every day that the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Praxair is subject to civil penalties for all violations of the CWA occurring since March 18, 2014.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D)-X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an

additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Dischargers must prepare "a site map that includes notes, legends, a north arrow, and other data as appropriate to ensure the map is clear, legible and understandable." 2015 Permit, ¶ X.E.1. The map must include "[t]he facility boundary, storm water drainage areas within the facility boundary, and portions of any drainage area impacted by discharges from surrounding areas." *Id.*, ¶ X.E.3.a. The map must "[i]nclude the flow direction of each drainage area, on-facility surface water bodies, areas of soil erosion, and location(s) of nearby water bodies (such as rivers, lakes, wetlands, etc.) or municipal storm drain inlets that may receive the facility's industrial storm water discharges and authorized NSWDS...." *Id.* The map must show the "[l]ocations of storm water collection and conveyance systems, associated discharge locations, and direction of flow [and] [i]nclude any sample locations if different than the identified discharge locations. *Id.*, ¶ X.E.3.b. The "[l]ocations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDS, and/or run-on" must be depicted on the map. *Id.*, ¶ X.E.3.c. "[A]ll impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures" must be identified on the map. *Id.*, ¶ X.E.3.d. The location of spills and leaks must be shown. *Id.*, ¶ X.E.3.e. Lastly, the map must identify "[a]reas of industrial activity subject to this General Permit. Identify all industrial storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and material reuse areas, and other areas of industrial activity that may have potential pollutant sources. *Id.*, ¶ X.E.3.f.

Despite these clear SWPPP requirements, Praxair has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP. The Facility's SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit. Praxair has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The Facility's SWPPP fails to comply with the requirements of Section X(E) of the 2015 Permit. Specifically, the SWPPP map fails to indicate where materials are directly exposed to precipitation; and they fail to identify all areas of industrial activity.

The SWPPP for the Facility fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. Even if a treatment system or other available advanced BMP is not identified in the SWPPP, the SWPPP must identify the advanced BMPs that are not being used at the Facility which could address the pollutants being discharged. The facility has failed to "ensure that the SWPPP identifies and justifies each minimum BMP or applicable advanced BMP not being implemented at the facility because they do not reflect best industry practice considering technological availability and economic practicability and achievability." 2015 Permit, § X.H.4.b.

Relatedly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges consistent with the BAT and BCT requirements. Despite these exceedances, Praxair has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges consistent with reductions achieved by implementing BAT and BCT at the Facility.

CBE puts Praxair on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CBE will include additional violations as information and data become available. Praxair is subject to civil penalties for all violations of the CWA occurring since March 18, 2014.

D. Failure to Comply with 2015 Permit Evaluation and ERA Requirements.

On or about December 22, 2016, Praxair submitted an "Exceedance Response Action Level 1 Evaluation and Report" to the State Board's SMARTs system. The ERA Report and Level 1 status are triggered by exceedances of the NALs adopted in the 2015 General Permits. The ERA Level One report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." 2015 Permit, § VII.C.1.c. Praxair's ERA Level 1 report addresses the Facility's exceedance of the annual NAL for aluminum, iron, and N+N during the 2015-2016 reporting year.

Although the Level One ERA Report addresses aluminum, iron, and N+N, Praxair failed to identify BMPs necessary to prevent future NAL exceedances or to comply with BAT/BCT requirement of the Permit. The measures identified in the ERA could not achieve, and indeed did not achieve, the applicable NAL for aluminum, iron, or N+N.

Because the Facility's discharges of aluminum, iron, and N+N have not been meaningfully reduced as a result of the Facility's Level 1 Status Report, as of July 1, 2017, the Facility is now in Level 2 Status. Praxair submitted a "Level 2 Exceedance Response Action Plan" to the State Board's SMARTs system on or about December 19, 2017. In order to return to baseline status from Level 2 status, Praxair must have "implemented BMPs to prevent future NAL exceedance(s)." 2015 Permit Section XII.D.4.a Praxair's Level 2 ERA Action Plan failed to identify additional BMPs necessary to prevent future NAL exceedances or to even address the iron, aluminum, and N+N exceedances from the Facility.

Although "[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances." Fact Sheet, p. 60. Accordingly, CBE puts Praxair on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without adequate Level 1 ERA Reports and an adequate Level 2 Action Plan for aluminum, iron, and N+N. These violations are ongoing. Praxair is subject to civil penalties for each day it has failed to submit adequate Level 1 ERA Reports and a Level 2 ERA Action Plan.

III. Persons Responsible for the Violations.

CBE puts Praxair, Inc., Kellina Anderson, Laura Cremer, and Salvador Valle on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CBE puts Praxair, Inc., Kellina Anderson, Laura Cremer, and Salvador Valle on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of CBE is as follows:

Katherine Hoff
Communities for a Better Environment
6325 Pacific Boulevard, Suite 300
Huntington Park, CA 90255
Tel. (323) 826-9771

V. Counsel.

CBE has retained legal counsel to represent it in this matter. Please direct all communications to:

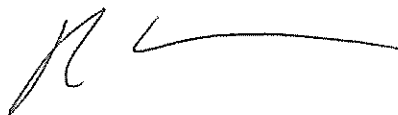
Rebecca L. Davis
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
rebecca@lozeaudrury.com
michael@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Praxair to a penalty of up to \$37,500 per day per violation for all violations occurring since December 15, 2012, up to and including November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CBE will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBE believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CBE intends to file a citizen suit under Section 505(a) of the Act against Praxair and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CBE would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CBE suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CBE does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Rebecca L. Davis
Lozeau Drury LLP
Attorneys for Communities for a Better Environment

SERVICE LIST – via certified mail

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Mike Stoker, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Samuel Unger, Executive Officer II
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

ATTACHMENT A
Rain Dates, Praxair, Inc., Long Beach, CA

3/1/2014	11/21/2016	1/7/2019
3/2/2014	11/27/2016	1/12/2019
4/1/2014	11/28/2016	1/15/2019
4/26/2014	12/16/2016	1/16/2019
11/1/2014	12/22/2016	1/17/2019
11/2/2014	12/24/2016	1/18/2019
12/1/2014	12/30/2016	2/1/2019
12/3/2014	12/31/2016	2/2/2019
12/4/2014	1/5/2017	2/3/2019
12/12/2014	1/6/2017	2/5/2019
12/13/2014	1/9/2017	2/9/2019
12/16/2014	1/11/2017	2/11/2019
12/17/2014	1/12/2017	2/14/2019
1/11/2015	1/13/2017	2/15/2019
1/12/2015	1/19/2017	3/2/2019
1/27/2015	1/20/2017	3/3/2019
2/23/2015	1/21/2017	3/6/2019
3/2/2015	1/22/2017	3/7/2019
3/3/2015	1/23/2017	
4/8/2015	2/4/2017	
5/8/2015	2/6/2017	
5/15/2015	2/7/2017	
5/16/2015	2/8/2017	
7/19/2015	2/11/2017	
7/20/2015	2/18/2017	
9/15/2015	2/20/2017	
10/5/2015	3/22/2017	
12/14/2015	4/8/2017	
12/20/2015	5/7/2017	
12/22/2015	5/8/2017	
12/23/2015	11/5/2017	
1/6/2016	1/9/2018	
1/7/2016	1/10/2018	
3/5/2016	2/27/2018	
3/6/2016	3/3/2018	
3/7/2016	3/11/2018	
3/12/2016	3/15/2018	
3/15/2016	3/23/2018	
4/8/2016	10/13/2018	
10/17/2016	12/25/2018	
10/24/2016	1/6/2019	

Notice of Violations and Intent to File Suit